

FILED**PETITION UNDER W. VA. CODE § 53-4A-1 FOR WRIT OF HABEAS CORPUS****OCT 26 2017****STATE OF WEST VIRGINIA**

County

*Kanawha*TED J. PHILYAW, ACTING CLERK
U.S. District Court
Southern District of West Virginia

Name

Andrew Miller

Prisoner No.

3452346

Case No.

2:17-cv-4224

Place of Confinement

M.O.C.C.

Name of Petitioner (include name under which convicted)

Name of Respondent (authorized person having custody of petitioner)

Andrew Miller

v.

*Ralph Terry***PETITION**

1. Name and location of court which entered the judgment of conviction under attack _____

*Bellevue County Circuit Court*2. Date of judgment of conviction *41. Feb 25, 10*3. Length of sentence *5 1/4 to 25 yrs*4. Nature of offense involved (all counts) *Kidnaping by force,**without endorsement, conspired to*
commit murder.

5. What was your plea? (Check one)

(a) Not guilty ☐(b) Guilty ☒(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☐(b) Judge Only ☐

7. Did you testify at the trial?

Yes ☐No ☐

8. Did you file a direct appeal from the judgment of conviction in the Supreme Court of Appeals?

Yes ☐No ☐

9. If you did appeal, answer the following:

(a) Date of filing _____

(b) Grounds raised _____

(c) Was the petition granted ☐ or refused ☐ ?

(d) If refused, what was date of refusal? _____

(e) If granted, give date and type of result and citation, if known. _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the circuit court, you must state grounds that have NOT been previously and finally adjudicated or waived. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Conditions of Confinement & Violation of Due Process.

Supporting FACTS (state briefly without citing cases or law) 1.) On 1st March 14 the Commissioner Approved this Prison to take inmates family money sent to them to cover inmates debt as per Policy 111.06[#] and left the remainder of the policy to stand. (Ex. 1[#])

(2.) On 1st March 14 to the present day

~~B. Ground two:~~ the trustee Clerk has took 40% of my family's money sent to me! (Ex. 2)

Supporting FACTS (state briefly without citing cases or law) 3.) The Respondant never served me a Notice of Withholding as per Policy 111.06[#] (Ex. 3[#])

4.) This violate my due process right, because I was never made aware of the money the Prison took!

5.) I ask this Court to Order the

~~C. Ground three:~~ Respondant to pay me 1,000^{\$} for violating my rights & the money this

Supporting FACTS (state briefly without citing cases or law) Prison has took of mine!

~~D. Ground four:~~ _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Have you, or an attorney representing you, obtained a transcript of the criminal proceedings which resulted in the conviction under attack?

Yes ☐ No ☐

17. If your answer to 16 was "no," have you submitted an Appellate Transcript Request form for transcripts to the circuit court, a court reporter, or any other tribunal or individual?

Yes ☐ No ☐

18. If your answer to 17 was "yes," attach a copy, if available, of the Appellate Transcript Request form and provide the name of the court or person to whom it was submitted and the date of submission.

(a) Copy of request is attached ☐

(b) Date ☐

(c) Name _____

19. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☐

20. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?


Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

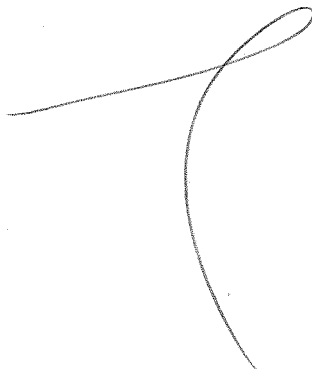
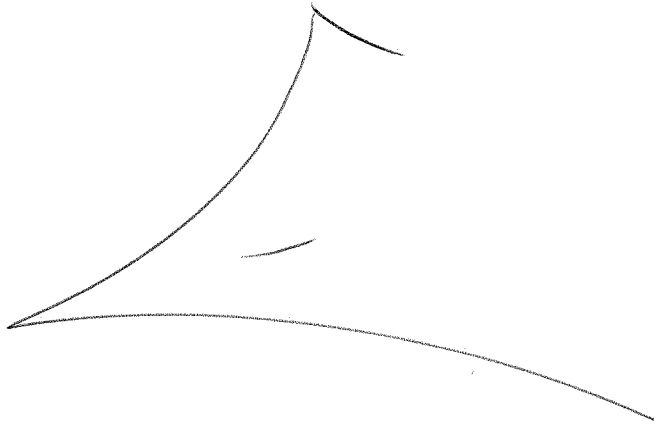
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10.17.17
(date)

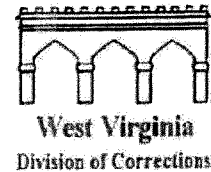


Signature of Petitioner





STATE OF WEST VIRGINIA
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF CORRECTIONS




JIM JUSTICE
GOVERNOR

JIM RUBENSTEIN
COMMISSIONER

JEFF S. SANDY, CAMS, CFE
CABINET SECRETARY

COMMISSIONER'S INSTRUCTION #17-05

TO: All Employees & Inmates
FROM:  Commissioner
DATE: 01 March 2017
RE: **INMATE EARNINGS DEFINITION**

Below please find the Commissioner's Instruction regarding the definition of inmate earnings. This Instruction shall take effect on 01 March 2017, and shall supersede and nullify any previous written instructions on this subject. The Senior Director of Fiscal Administration shall be responsible for ensuring this Instruction is enacted, and this Instruction is applicable to all facilities and work units for **GENERAL DISTRIBUTION**, and is to be made available for inmate review. This Instruction is not exempt from Freedom of Information Act Requests.

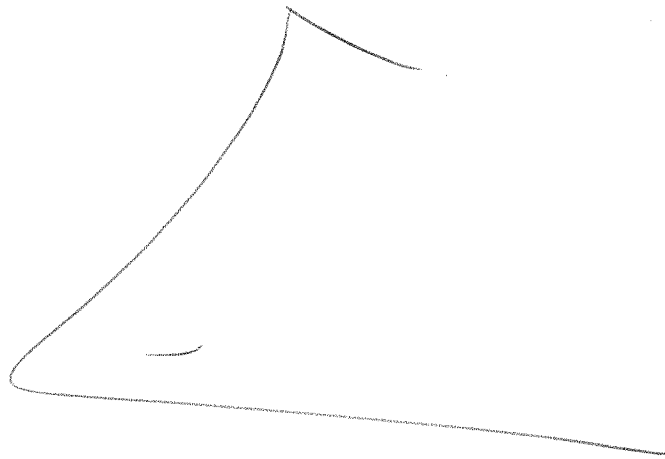
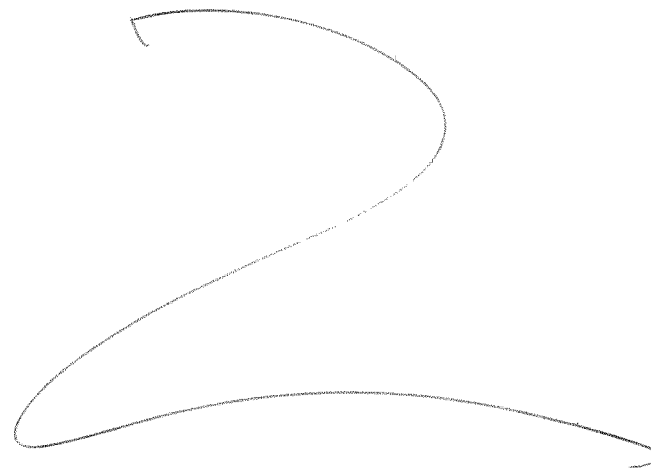
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INMATE EARNINGS

- I. Effective 01 March 2017, Policy Directive 111.06: **Financial Responsibility Program for Inmates** dated 01 November 2014 is revised as follows:

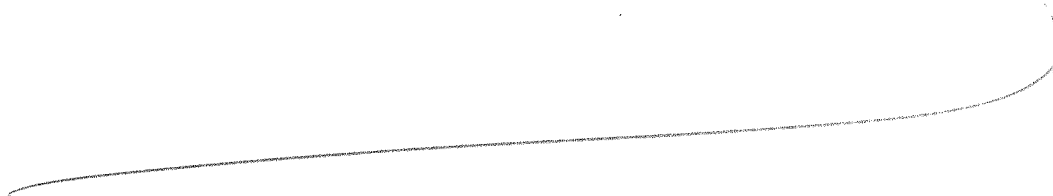
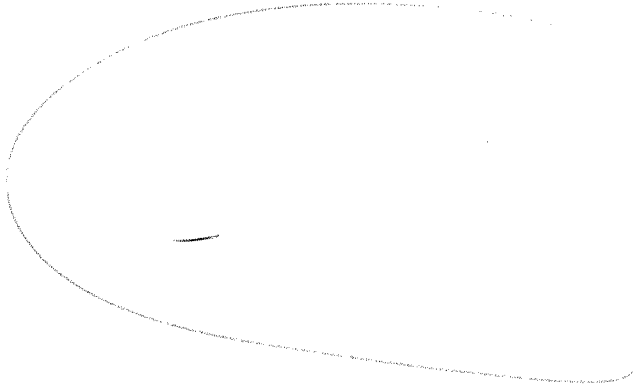
Earnings: All sums of money paid to an inmate on account of any work assignment, or other allowable means by which an inmate may be compensated for work performed or goods sold, including earnings from work in Correctional Industries and indigent pay; proceeds from any arts and craft sale; all sums of money received by the inmate on account of a settlement of a lawsuit, civil judgement, or other lawful process; proceeds from any inheritance, bequest, or gift; **or funds provided the inmate by family or friends**. Earnings shall not include sums deducted for mandatory savings.

- II. The remainder of the aforementioned Policy stands as written.

cc: File

A large, handwritten number '1' in black ink, positioned in the upper left quadrant of the page.A large, handwritten number '2' in black ink, positioned in the middle left of the page.A large, handwritten number '3' in black ink, positioned in the lower left quadrant of the page.

See Resident Transaction Details {ECF No. 1}



APPROVED FOR INMATE VIEWING

Policy Directive 111.06
01 November 2014
Attachment #1

NOTICE OF WITHHOLDING

TO: _____
(Inmate Name)

DOC # _____

You are hereby notified that a review of your records has revealed that you have the following financial obligations which are subject to deductions pursuant to policy directive _____. These obligations are as follows:

☐ Current Child Support of \$ _____ per month

☐ Back Child Support of \$ _____

☐ Restitution in the amount of \$ _____ to _____

☐ Restitution in the amount of \$ _____ to _____

☐ Restitution in the amount of \$ _____ to _____

(attach additional sheet if necessary)

☐ Other obligations in the amount of \$ _____ (specify below)

Commencing on or about the ____ day of _____, 20____ deductions from your account will commence. Deductions will be based upon 40% of your earnings. Earnings are defined as all sums of money paid to an inmate on account of any work assignment, or other allowable means by which an inmate may be compensated for work performed or goods sold, including earnings from work in correctional industries and indigent pay. Earnings shall also include 40% of the proceeds from any arts and crafts sale. Earnings shall further include all sums of money received by the inmate on account of a settlement of a lawsuit, civil judgment, or other lawful process, inheritance, bequest, gift, except funds provided the inmate by family or friends. Earnings shall not include sums deducted for mandatory savings.

You may dispute these charges by filing a grievance pursuant to Policy Directive 335.00. You should, however, be aware that the Division of Corrections cannot alter or reduce obligations imposed by outside authorities.